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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR               | ATTORNEY DOCKET NO. | CONFIRMATION NO.   |
|--|-------------|------------------------------------|---------------------|--------------------|
| 10/568,802   | 06/16/2008  | Christian Albrich Von Albrichsfeld | AP 10761            | 7565               |
| 52203  | 7590        | 03/10/2011                         | EXAMINER            |                    |
| CONTINENTAL TEVES, INC.<br>ONE CONTINENTAL DRIVE<br>AUBURN HILLLS, MI 48326-1581 |             |                                    |                     | WILLIAMS, THOMAS J |
| ART UNIT   |             | PAPER NUMBER                       |                     |                    |
| 3657   |             |                                    |                     |                    |
| MAIL DATE  |             | DELIVERY MODE                      |                     |                    |
| 03/10/2011   |             | PAPER                              |                     |                    |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                                 |  |
|------------------------------|------------------------|---------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b>             |  |
|                              | 10/568,802             | ALBRICH VON ALBRICHSFELD ET AL. |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>                 |  |
|                              | Thomas J. Williams     | 3657                            |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 10-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 10, 12, 13, 15-17, 21, 23 and 24 is/are rejected.
- 7) Claim(s) 11, 14, 18-20 and 22 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 16 June 2008 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/17/06</u> .   | 6) <input type="checkbox"/> Other: _____.                         |

## **DETAILED ACTION**

1. Acknowledgment is made in the receipt of the preliminary amendment and information disclosure statement filed February 17, 2006 and the oath filed June 16, 2008.
2. The drawings were received on June 16, 2008. These drawings are accepted.

### **Claim Objections**

3. Claims 10 and 17 are objected to because of the following informalities:

Claims 10 and 17, the recitation "a first sensor for sensing the brake pedal actuating travel" should be changed to "a first sensor sensing a brake pedal actuating travel";

Claim 10 line 22, the recitation "the nominal value" should be changed to "a nominal value";

Claim 17 line 17, the recitation "a second sensor for sensing the travel" should be changed to "a second sensor for sensing a travel";

Claim 17 lines 22-23, the recitation "the nominal values" should be changed to "nominal values".

Appropriate correction is required.

### **Claim Rejections - 35 USC § 112**

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 13, 15 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 13 recites the limitation "the comparison" in line 2. There is insufficient antecedent basis for this limitation in the claim.
7. Regarding claims 15 and 23, the abbreviation "e.g." (equivalent to "for example) renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### **Claim Rejections - 35 USC § 103**

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 10, 12, 16, 17, 21 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 2004/005095 A1 to Von Hayn et al. in view of US 6,209,968 to Bayens et al.

US 2006/0163941 A1 is relied upon as the English language equivalent to the WO document.

Re-claims 10, 12, 17 and 21, Von Hayn et al. teach a brake by wire system, comprising: a brake booster operable by a driver and an electronic regulating and control unit 4; the brake pedal is decoupled from the brake booster during brake by wire operation (see paragraph 54 lines 17-18); a master brake cylinder 11 is downstream of the brake booster; a pedal travel simulator 2 interacts with the brake pedal; sensor 3 senses brake pedal actuating travel; sensor 17 senses a travel of booster output member; sensor 18 measures a prevailing brake pressure in the system; electronic unit 4 contains control circuitry for controlling the travel of the output member by controlling a magnetic drive 8 of a booster valve, in response to a nominal value of the travel covered by the output member and actuating travel of the brake pedal. Von Hayn et al. further teach that the control unit can detect a malfunction in the brake circuit, see paragraph 39. However, Von Hayn et al. fail to teach the response the electronic unit would initiate upon detecting the malfunction, in particular performing a partial compensation of the extension of the travel covered by the output member.

Bayens et al. teach a vacuum booster having an electromagnetic valve that is controlled by a control unit, wherein a compensation procedure is carried out when an actual pressure prevailing in the brake circuit is less than a nominal pressure; this is interpreted as a brake circuit malfunction. The pressure values are converted into comparative current values used to control the electromagnetic valve, thereby moving the booster wall accordingly. Furthermore, Bayens et al. teach a correction value  $I_B$  added to the nominal value  $I_A$ . It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the system of Von Hayn et al. with a means of addressing the brake circuit malfunction as taught by Bayens et al., thereby ensuring the proper brake fluid pressure is applied to the wheel cylinder units.

Re-claims 16 and 24, Von Hayn et al. teach the use of a warning lamp, see paragraph 31.

### **Allowable Subject Matter**

11. Claims 11, 14, 18-20 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
12. Claims 13, 15 and 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### **Conclusion**

13. Any inquiries concerning this communication or earlier communications from the examiner should be directed to Thomas Williams whose telephone number is 571-272-7128. The examiner can normally be reached on Wednesday-Friday from 6:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi, can be reached at 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-6584.

TJW  
March 9, 2011

/Thomas J. Williams/  
Primary Examiner, Art Unit 3657